

**NOT FOR PUBLICATION**

[15]

**UNITED STATES DISTRICT COURT  
DISTRICT OF NEW JERSEY**

MERCHANTS MUTUAL INSURANCE  
COMPANY,

Plaintiff,

V.

MONMOUTH TRUCK EQUIPMENT,  
INC., DAVID W. MULLIGAN, JR., JACK  
T. WILSON; FRANK R. SNYDER;  
JAMES T. GRESKO; and DONALD T.  
STILTON,

Defendants.

Civil No. 06-5395(FLW)

## OPINION

**WOLFSON, UNITED STATES DISTRICT JUDGE**

Presently before the Court is a “Motion” by Defendant Donald Allen Stilton (“Stilton”) asking this Court to “Transfer” a State Court Proceeding in which he is a Plaintiff to the Federal Court. The Court has considered the moving and opposition papers and for the reasons set forth below, Stilton’s “Motion” is denied.

## I. DISCUSSION

On January 22, 2007, Stilton filed the instant Motion asking this court to “transfer” an action pending in Monmouth County Superior Court in which Stilton is the plaintiff to the Federal Court and consolidate it with a pending federal action in which Stilton is a defendant. 28 U.S.C. §1441 governs the removal of actions from state court to federal court. Specifically,

section 1441 provides, in relevant part: “Except as otherwise expressly provided by Act of Congress, any civil action brought in a State court of which the district courts of the United States have original jurisdiction, may be removed by the defendant or the defendants, to the district court of the United States for the district and division embracing the place where such action is pending.” 28 U.S.C. §1441 (a)(emphasis added). In the instant matter, Stilton is seeking the removal of an action from state court to federal court; however, Stilton is the plaintiff in the state action and the removal statute expressly provides that removal can only be granted at the Defendant’s request. Indeed, based on the express language of the removal statute, this Court need not even reach the underlying merits of Stilton’s “Motion” and this Court will simply deny Stilton’s “Motion” to Transfer and Consolidate.

## **II. CONCLUSION**

For the reasons set forth above, Plaintiff’s “Motion to Transfer” is DENIED. An appropriate Order shall follow.

Dated: February 28, 2007

/s/ Freda L. Wolfson  
Honorable Freda L. Wolfson  
United States District Judge